

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION FIELD OPERATIONS TRAINING MANUAL

Volume - II: Compliance

Chapter 2: Compliance Review Procedures and Guidelines for the Federal Motor Carrier Safety Regulations

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Illustration 2-1: CVSA Executive Policy No. 17

1. Part 390

- a. Begin inquiring about the motor carrier's procedures for handling and evaluating its accidents. Inquire about the actions that the motor carrier may have already taken to stop certain types of accidents from reoccurring. Identify and record the drivers and vehicles that have been involved in accidents (that are required to be listed on the accident register). These drivers and vehicles will be used to focus the CR.
- b. The review of the motor carrier's accidents **must** cover the 12 month period prior to the initiation date of the CR regardless of the date of the previous CR. Review motor carrier's accidents to determine recordability. Make sufficient notes about the preventability of recordable accidents for possible use in rating change requests.
- c. Obtain the motor carrier's total commercial motor vehicle mileage for the previous 12 months. Verify the accuracy of this mileage figure by reviewing records which show mileage information such as records related to IRP, IFTA, etc. Review the accidents listed on the carrier's profile. Documents from the motor carrier's insurance company (such as a loss run) may be helpful with discovering and obtaining information about the carrier's accidents. Determine whether the motor carrier's accident register includes all required accidents.

- d. Compute the motor carrier's recordable accident rate (factor 6). This rate is normally calculated by the computer, however, if manual calculation is necessary, multiply the motor carrier's number of recordable accidents in the previous twelve months by 1,000,000, and dividing this product by the motor carrier's fleet mileage during the previous twelve months. For example, a motor carrier had two recordable accidents and fleet mileage of 3,000,000 during the previous 12 months. The motor carrier's recordable accident rate is $(2 \times 1,000,000) / 3,000,000$ which is 0.67. All recordable accidents and mileage occurring in Canada and Mexico for motor carriers domiciled in the United States must be included in this calculation. Only recordable accidents and mileage occurring in the United States are used in this calculation for motor carriers domiciled in Canada or Mexico.
- e. If you discover any accidents or vehicle inspections on the motor carrier's profile that do not belong to the carrier, advise an appropriate carrier official of the error(s) and explain how to request a correction as explained in CVSA Executive Policy No. 17 (see Illustration 2-1).
- f. If possible or available, ensure that vehicles are marked properly.

2. **Part 391**

- a. Question the appropriate motor carrier official about the company's procedures for driver hiring, qualification, and training.
- b. To assist in the review of Part 391, request a list of drivers employed in the last 365 days, and their dates of hire and termination. Verify the accuracy and completeness of this list by reviewing the motor carrier profile, payroll records, dispatch records, bills of lading, and/or other shipping documents. The minimum number of driver qualification files to be reviewed for compliance is set forth in the table below:

Number of Drivers Subject to the FMCSRs	DQ Files Reviewed
1-5	All
6-25	5
26-50	8
51-90	13
91-150	20
151-280	32
281-400	50

401-500	68
501-1,200	80
1,201-3,200	125
3,201-10,000	200
10,001-35,000	315
35,001-150,000	500

- (1) Select driver qualification files from the list of drivers involved in accidents first. Next select drivers that have been cited for driver qualification violations during roadside inspections, recently hired drivers, or drivers with moving violations. The balance of the drivers selected may include regular company drivers, drivers furnished by lessors, casual drivers, trip lease drivers, drivers hired at different terminals or branch locations. **If the carrier employs five or fewer drivers, review all the files.**
 - (2) If the focused review indicates substantial noncompliance, additional drivers should be selected to determine the degree of noncompliance and to determine whether enforcement action is appropriate. Ensure that the reason for expanding the selection is explained in Part C of the CR Report.
 - (3) If the minimum number of driver qualification files is not reviewed, an explanation must be provided in Part C of the CR report.
- c. Verify that the motor carrier has corrected any driver out-of-service violation from a roadside inspection in the previous 12 months and verify whether the driver complied with the out-of-service order.

3. **Part 382**

- a. If the motor carrier must conduct controlled substances and alcohol testing, the laptop worksheet should be used to review the controlled substances and alcohol testing program. If the worksheet is not used, review of the motor carrier's testing program must be otherwise documented. Verify that the motor carrier is maintaining the required controlled substances and alcohol testing records.
- b. Review the controlled substance testing records for those drivers who were hired during the previous 365 days and subject to Part 382. Review pre-employment controlled substance testing and inquiries from previous employers for alcohol and controlled substance testing information for those drivers selected. Verify that drivers were not used by the motor carrier prior

to the motor carrier receiving notification of the test results. The selection of drivers to review and the minimum number of pre-employment controlled substance tests to be reviewed for compliance is set forth in the table below:

Number of Drivers Hired in the Previous 365 Days, subject to Part 382	Minimum Number of Pre-Employment Controlled Substance Test Results to Review
1-5	All
6-25	5
26-50	8
51-90	13
91-150	20
151-280	32
281-400	50
401-500	68
501-1,200	80
1,201-3,200	125
3,201-10,000	200
10,001-35,000	315
35,001-150,000	500

- c. If a driver is discovered to have not been pre-employment tested for controlled substances, ensure that the carrier has not exercised the pre-employment controlled substances testing exception. The motor carrier must be cited for failing to conduct a pre-employment controlled substances test for each driver that was not tested or did not meet the pre-employment controlled substances testing exception. In addition, the motor carrier must be instructed to conduct a pre-employment test on all drivers hired during the previous 365 days who were not pre-employment tested for controlled substances **and** who were not otherwise tested for controlled substances during the previous 365 days. For example, a driver who was not pre-employment tested for controlled substances, but was later tested for controlled substances under the random testing requirements, would not be required to make up the missed pre-employment test.

- d. Verify that all driver's required to submit to a post-accident controlled substances and alcohol tests are tested as required. Applies to all recordable accidents within the last 365 days. Validate carrier's reason for failing to complete tests within the required time limits.
- e. Citing the motor carrier for failing to test at the appropriate random testing rates must only cover the previous full calendar year. In most cases this will require that records older than 365 days will be reviewed. Additionally, you must ensure the random tests are reasonably spread throughout the year and the carrier is utilizing a scientifically valid random selection method.
- f. The number of required random tests in a calendar year is based upon the average number of driver positions and the applicable minimum annual percentage rate for random testing. If there are large fluctuations in the number of driver positions throughout the year without any clear indication of the average number of driver positions, the necessary number of random tests is based upon a reasonable estimate of the number of positions by the motor carrier.
- g. Review all reasonable suspicion tests that have been conducted and ensure all supervisors have received the proper training.
- h. Determine the identity of drivers who tested positive for alcohol or controlled substances in the previous 12 months. Review the motor carrier's quarterly statistical summaries of urinalysis testing to verify that the identities of all drivers who tested positive for controlled substances in the previous 12 months are known. A discussion with the medical review officer may be necessary. Ensure no drivers who had a alcohol concentration of 0.04 or greater, or who tested positive for a controlled substance, were used by the motor carrier after notification of the test results.
- i. Ensure those drivers who have tested positive, refused to test or adulterated a test, and are retained by the motor carrier, undergo a SAP evaluation and a return to duty test with a negative result prior to performing a safety sensitive function.
- j. Ensure any drivers identified by the SAP as needing assistance undergo the required follow-up testing and any rehabilitation prescribed.

4. Part 383

- a. The license status and driving records of drivers must be checked. The Commercial Driver's License Information System (CDLIS) is the preferred method, however, other effective means of checking license status and driving records are acceptable (e.g. NLETS, NCIC, State Licensing

System). Checks must be done on those drivers whose driver qualification files were selected for review. Additional checks may be done. Verify that these drivers have any required endorsement(s) to their commercial driver licenses. When reviewing driving records, check for disqualifying offenses.

- (1) CDLIS checks may be made prior to the initiation of the CR, but keep in mind that some of these drivers may no longer be employed by the motor carrier. If a poor driving record is discovered through a CDLIS check, the driver qualification file for the driver with the poor driving record should be reviewed.
- (2) If a suspended, revoked, or somehow invalid license is discovered through a CDLIS check, check with the State licensing agency to verify the license status. If the license was reinstated, determine whether the driver drove for the motor carrier during the period of suspension.
- (3) Upon verification of an invalid license, notify the motor carrier that the driver does not currently possess a valid license. Prior to notifying the carrier of the invalid license, an investigator must investigate whether the motor carrier is currently using the driver with the invalid license and whether the carrier has knowledge of the invalid license. A motor carrier having knowledge of an invalid license, and requiring or permitting the driver to operate a commercial motor vehicle is a mandatory enforcement violation (see Illustration 6-1 in Chapter 6 of this Volume). Upon discovery, the motor carrier must be advised to no longer use the driver until his/her license becomes valid.
- (4) If the driver is on duty at the time of notification, advise the motor carrier that it is their responsibility to contact the driver as soon as possible and relieve him/her from driving duties. If the motor carrier continues to use the driver after being notified of the invalid license by the investigator or other means, the investigator **must** gather the appropriate documentation and initiate enforcement action (see Chapter 11 of Volume III - Enforcement - for proper documentation).
- (5) If CDLIS checks are not performed, provide an explanation in Part C of the CR report, and utilize another method to check driving records and the status of licenses.

5. Parts 393 and 396

- a. Review of compliance with Parts 393 and 396 is to cover the 12 month period prior to the date of the CR or since the prior CR if the period is less than 12 months. **The purpose of reviewing these parts is to establish the effectiveness of the vehicle maintenance practices of the motor carrier or its agent, and to determine the general condition of the motor carrier's vehicles.**

- b. Vehicle inspections are an integral part of determining the effectiveness of the carrier's maintenance program. Vehicle inspections during the CR are **NOT** required:
- (1) If the motor carrier has 19 or fewer power units **AND** the motor carrier has had three or more level 1, 2, and 5 vehicle inspections within the previous 12 months;
 - (2) If the motor carrier has 20 to 99 power units **AND** the motor carrier has had five or more level 1, 2, and 5 vehicle inspections within the previous 12 months; or
 - (3) If the motor carrier has 100 or more power units **AND** the motor carrier has had ten or more level 1, 2, and 5 vehicle inspections within the previous 12 months.
- c. Vehicle inspections **must** be conducted during the CR if none of the three cases described above apply. Inspect vehicles that were operated in interstate commerce within the previous 7 days, ready for dispatch and are available for inspection. First, inspect those vehicles involved in accidents. Second, inspect vehicles that have been placed out-of-service or cited for equipment violations during roadside inspections within the previous 12 months. Verify whether these out-of-service and other defects have been repaired.
- (1) When conducting vehicle inspections, inspect at least one of each type of vehicle operated (straight truck, truck tractor, etc.), and perform Level 5 full inspections. If full inspections are not appropriate, provide an explanation in Part C of the CR report.
 - (2) Before conducting vehicle inspections during a CR, request the assistance of a driver, mechanic, or other individual capable of operating the controls of the vehicle. The results of vehicle inspections should be recorded by using the laptop ASPEN software. This information must be uploaded through SAFETYNET into MCMIS. Violations of Part 393 related to unsafe, inoperable, or missing vehicular parts and accessories are not entered on the CR report.
 - (3) All discovered out-of-service violations must be brought to the attention of the appropriate motor carrier official. Advise this individual that the vehicle(s) cannot be legally operated until the necessary repairs have been made. Form MCS-64, Out-of-Service Order, or appropriate State form, must be placed on the out-of-service vehicle(s).

- d. Canadian inspections conducted using CVSA standards and discovered during a CR can be used to calculate the vehicle out-of-service rate.
- e. Regardless of either the number of vehicle inspections in the MCMIS or the number of vehicles inspected during the CR, the minimum number of maintenance files set forth in the table below must be reviewed.

Number of Vehicles Subject to FMCSRs	Vehicles or Maintenance Files to Review
1-5	All
6-25	5
26-50	8
51-90	13
91-150	20
151-280	32
281-400	50
401-500	68
501-1,200	80
1,201-3,200	125
3,201-10,000	200
10,001-35,000	315
35,001-150,000	500

Note: Each power unit is considered a vehicle for the purpose of the number to be sampled.

- (1) First, select the maintenance files of those vehicles involved in recordable accidents. Second, select the files for vehicles placed out-of-service and otherwise cited for equipment violations during roadside inspections. Any remaining files should be selected randomly. Verify whether defects cited on vehicles placed out-of-service within the previous 12 months have been corrected.
- (2) If the minimum number of maintenance files is not reviewed, an explanation must be provided in Part C of the CR report.
- (3) Review at least one maintenance file for each type of vehicle operated.

- (4) If the motor carrier leases motor vehicles or uses owner-operators, maintenance files for these vehicles should comprise a portion of the reviewed maintenance files.
- (5) When reviewing the maintenance files of vehicles placed out-of-service during roadside inspections within the previous 12 months, verify the existence of documentation that confirms the necessary repairs were made.
- (6) When reviewing a maintenance file, verify that routine maintenance is documented, the vehicle is periodically inspected in accordance with § 396.17, and the periodic inspector is qualified. Verify that driver vehicle inspection reports have been prepared by the drivers who have operated the vehicle.
- (7) Recordkeeping violations related to vehicle inspection, repair, and maintenance are not recorded by using the laptop ASPEN software or by preparing form MCS-63 or a similar State form. Such violations must be cited on Part B of the CR report.

f. **Calculation of out-of-service rate:** If three or more level 1, 2, and 5 vehicle inspections were conducted within the previous 12 months, calculate the motor carrier's out-of-service rate and enter the rate into the laptop CR software. This calculation is made by using the number of vehicles placed out-of-service during such inspections within such time period. If the motor carrier had a CR within the previous 12 months, use the inspection data after the previous CR only. Use the data from the same number of the most recent (chronological) inspections as the number of maintenance files that must be reviewed for the size of the motor carrier's fleet (according to the table in paragraph e. of this Chapter). Do not use data from additional inspections. The most recent data includes the data from level 1, 2, and 5 vehicle inspections that are discovered during the CR and are not on the motor carrier's profile, and those inspections conducted during the CR. If such inspection data is used, provide an explanation in Part C of the CR report.

The following is an illustration of an out-of-service rate calculation: A motor carrier operates 45 power units and has not had a prior CR. The table specifies that eight maintenance files must be reviewed for an operation of 45 power units. The eight most recent level 1, 2, and 5 vehicle inspections must be used to calculate the motor carrier's out-of-service rate. Two recent level 1 vehicle inspections (that are not on the motor carrier's profile) are discovered during the CR. These inspections are more recent than any inspection on the profile. The two discovered inspections and the six most recent level 1, 2, and 5 inspections on the profile are used to calculate the out-of-service rate. Even though there were more than eight level 1, 2, and 5

vehicle inspections conducted within the previous 12 months, only the eight most recent level 1, 2, and 5 vehicle inspections are used. Four out of the eight inspections resulted in the vehicle being placed out-of-service. The out-of-service rate, therefore, is 50% (4 / 8).

- (1) If the motor carrier operates five or fewer power units, and if the carrier's profile shows that three or more level 1, 2, and 5 vehicle inspections have been conducted within the previous 12 months and after the previous CR, the three most recent inspections are used to calculate the carrier's out-of-service rate.
- (2) If the motor carrier's profile shows fewer than three level 1, 2, and 5 vehicle inspections have been conducted within the previous 12 months and after the previous CR, one or more level 1 or 5 vehicle inspections may be conducted at the carrier's facility as substitute inspections to attain the necessary three vehicle inspections to calculate the carrier's out-of-service rate. Through either automated or manual means, data from these inspections must be entered in SAFETYNET and uploaded to MCMIS. See the SAFETYNET manual for technical guidance.
- (3) If data from three vehicle inspections cannot be attained from roadside inspection data, vehicle inspections conducted at the carrier's facility, or a combination of both, the out-of-service rate is not calculated. If this situation occurs, explain why the out-of-service rate was not calculated in Part C of the CR report.
- (4) A motor carrier's profile may contain inspection data of vehicles that are not operated by the carrier. The accuracy of the inspection data on the motor carrier's profile that is used to calculate the out-of-service rate should be verified through the examination of documents possessed by the motor carrier or other means. If you discover any inaccurate inspection data on the profile, advise an appropriate carrier official of the error(s) and explain how to request a correction as explained in CVSA Executive Policy No. 17 (see Illustration 2-1 of this Chapter).

6. Part 395

- a. Review of compliance with Part 395 covers the previous six months, or the time period since the previous CR if the previous CR was performed less than six months ago. However, in certain situations (i.e., accidents), expansion beyond six months may be appropriate. The number of records of duty status (RODS) and/or time records (if the motor carrier uses 100 air-mile radius drivers) to be reviewed for hours of service compliance is based

upon the motor carrier's number of employed drivers who are subject to the Federal Motor Carrier Safety Regulations. The minimum number of RODS that must be reviewed is defined in the table below.

Number of Drivers Subject to FMCSRs	Number of Different Drivers Selected	Time Period of Records of Duty Status	Minimum Number Reviewed For False Logs, Excess Hours, etc.
1-5	All	1-2 months from prior 6 months.	150
6-15	5	1-2 months from prior 6 months.	150
16-50	7	1-2 months from prior 6 months.	210
51-150	11	1-2 months from prior 6 months.	330
151-500	17	1-2 months from prior 6 months.	510
501-Over	27	1-2 months from prior 6 months.	810

- (1) First, select the RODS/time records of drivers involved in accidents (that are required to be listed on the accident register). Next, select the RODS/time records of drivers who were placed out-of-service for hours of service violations during recent roadside inspections, drivers with logbook violations, and drivers who were discovered to have poor driving records through CDLIS checks. If the investigator concludes that certain drivers have a high likelihood of excessive driving, the RODS/time records of these drivers should be reviewed. If it is discovered that certain areas of a motor carrier's operation have a significant degree of hours of service violations, additional emphasis of the review on these areas is appropriate. Any remaining RODS/time records should be selected randomly. A diverse selection of RODS/time records must be reviewed by selecting records from various drivers, months, and terminals unless focus or concentration is appropriate such as in the case of a highly seasonal operation.
- (2) If the minimum number of RODS and/or time records is not reviewed for excessive driving or falsification, an explanation must be provided in Part C of the CR report.

- (3) When performing a CR on a motor carrier with seasonal operations, select RODS and/or time records from those months (in the previous six months) when the carrier's operation was most active.
- b. To detect falsification of RODS and/or time records, compare the entries on these records to verified information on other documents. Documents that include mileage, time, or date information can be used to verify record of duty status entries. Some examples of documents that might be used are: tachograph charts, payroll records, dispatch records, delivery receipts, toll receipts, bills of lading, maintenance records, fuel receipts, weight receipts, delivery receipts, trip reports, accident reports, time-clock records, security guard reports, State vehicle inspection reports, port of entry receipts, State speeding/moving citations, private patrol company reports, various trucking association safety council patrol reports, worker's compensation first report of injury reports, etc. The investigator must take appropriate action to verify the accuracy of these supporting documents.
 - (1) Each false RODS cited on a CR report must be recorded in the investigator's hand-written or laptop notes. The name of the driver, date, and the supporting document(s) used to detect falsification should be noted for each citation of false RODS.
 - (2) In order for a false RODS to be a violation of a critical regulation, the supporting document(s) must indicate the RODS is false by one hour or more, or fifty miles or more.
- c. The system used by the motor carrier to control its drivers' hours of service must be determined through verbal or written statement by a motor carrier official. If the motor carrier has global positioning system (GPS) technology capability, but uses a system of hard-copy supporting documents that appears sufficient to determine compliance with the regulations, do not insist that GPS records be produced during a CR. In such circumstances, failure of the motor carrier to use or produce GPS or other advanced technology records would not be considered a regulatory violation and must not be cited on Part B of the CR report. If it is believed that the motor carrier's system is ineffective, or is incapable of verifying hours of service and the accuracy of RODS, the investigator must obtain concurrence from the Field Administrator in the respective Service Center prior to requesting access to any GPS or other advanced technology records. The Field Administrator will inform the Director, Office of Enforcement and Compliance of this request and its disposition. The effectiveness of the carrier's system may relate to such performance indicators as high accidents, high driver OOS rates, or the absence of supporting documents.

- d. During investigations of a critical or criminal nature which require the review of all available documentation to uncover or substantiate material facts, the Field Administrator shall decide whether a request for GPS or other advanced technology records is necessary. These critical investigations include, but aren't limited to: multiple fatalities, hazardous material incidents, NTSB investigations, widespread fraud, etc.
- e. Any document related to transportation in the possession of the motor carrier may be examined during a CR. [49 U.S.C. §§ 504, 5121, and 31133].

7. Part 392

- a. Review of compliance with Part 392 is to cover the 12 month period prior to the date of CR or since the last CR if the period is less than 12 months. Items to be reviewed should include the existence of extended runs, load securement procedures, safe driving procedures, driver use of alcohol and drugs, and the presence of radar detectors. Violations of the regulations in Part 392 which are found on the carrier's profile or on roadside inspection reports must not be cited on the CR report.